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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,455	04/05/2006	Moise Azria	PA/4-33288A	9884

1095 7590 06/24/2009

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CORPORATE INTELLECTUAL PROPERTY
ONE HEALTH PLAZA 104/3
EAST HANOVER, NJ 07936-1080

EXAMINER	
XIE, XIAOZHEN	
ART UNIT	PAPER NUMBER
1646	

MAIL DATE	DELIVERY MODE
06/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/565,455	AZRIA ET AL.	
	Examiner	Art Unit	
	XIAOZHEN XIE	1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1,2,5,6,9 and 10*.
   Claim(s) withdrawn from consideration: *17 and 18*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Gary B. Nickol /
Supervisory Patent Examiner, Art Unit 1646

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 1, 2, 5, 6, 9 and 10 remain rejected under 35 U.S.C. 103(a), as being unpatentable over Ghirri et al. (US 6,352,974 B1), in view of Bay et al. (US 20020065255 A1), for reasons made of record.
Applicant argues that Ghirri fails to disclose the claim element "between 0.4 and 2.5 mg of salmon calcitonin in free or salt form"; and Bay fails to cure the deficiency. Applicant argues that Ghirri teaches that salmon calcitonins typically have an activity of up to 6,500 IU/mg (e.g., Example 1 of Ghirri uses salmon calcitonin with a potency of 6,567.7 IU/mg). Applicant argues that Ghirri indicates that the pharmaceutical preparations preferably have a unit dose of active material from about 20-600 IU, which would contain about 3ug-92ug of salmon calcitonin based on an specific activity of 6,500 IU/mg. Applicant argues that Bay, on the other hand, uses doses of 25-4000 mg/kg of salmon calcitonin for administration to rats and monkeys, which is far more than that used by Applicants. Applicant argues that Bay suggests that a large dose of salmon calcitonin would be required in combination with, e.g., 5-CNAC, to achieve high levels of salmon calcitonin in vivo, that teaches away from using only between 0.4 and 2.5 mg as recited in Applicant's claimed methods. Applicant argues that oral delivery of proteins is extremely difficult to achieve, and hence extremely unpredictable. Applicant also argues that neither Ghirri nor Bay provide any evidence that salmon calcitonin may be successfully used to treat osteoarthritis or to inhibit resorption and/or normalize turnover of subchondral bone in a human. Applicant argues that Bay's successful delivery of salmon calcitonin to a rat or a monkey tells nothing about whether salmon calcitonin would actually result in treatment of a human. Applicant argues that the present application demonstrates for the first time that calcitonin can be successfully delivered orally to humans, and is efficacious in the treatment of osteoarthritis in humans; and prior to Applicant's finding, conflicting reports existed as to whether calcitonin could even be used to prevent cartilage destruction.
Applicant's arguments have been fully considered but have not been found to be persuasive.
Ghirri teaches oral pharmaceutical compositions comprising salmon calcitonin. Ghirri teaches the use of calcitonins for treating a variety of conditions, e.g., Paget's disease (the symptoms of Paget's disease include osteoarthritis), post-menopausal osteoporosis. Ghirri teaches that the compositions preferably have a unit dose of active material from about 20-600 IU; and for salmon calcitonin, each mg has up to 6500 IU activity. However, the phrase "up to" refers to a range (i.e., "as many as", or "to the limit of"); in other words, the specific activity for salmon calcitonin can be 6500 IU/mg or lower. Therefore, the unit dose of salmon calcitonin in Ghirri et al.'s composition meets the instant limitation of "between 0.4 and 2.5 mg of a calcitonin". With regard to Applicant's argument that Bay teaches away from using only between 0.4 and 2.5 mg because Bay suggests using a large dose of salmon calcitonin in combination with 5-CNAC to achieve high levels of salmon calcitonin in vivo, however, Ghirri teaches the doses of salmon calcitonin that are therapeutically effective, and Ghirri does not require salmon calcitonin to achieve to the "high levels". With regard to the argument that neither Ghirri nor Bay provides any evidence that salmon calcitonin may be successfully used to treat osteoarthritis, however, the previous office action has established the instant invention to be prima facie obvious.